

§ 780.713

29 CFR Ch. V (7-1-11 Edition)

only institutions that have five employees or less" (107 Cong. Rec. (daily ed.) p. 5883). Since the Act is applied on a workweek basis, a country elevator is not an exempt place of work in any workweek in which more than five employees are employed in its operations.

§ 780.713 Determining the number of employees generally.

The number of employees referred to in section 13(b)(14) is the number "employed in the establishment in such operations". The determination of the number of employees so employed involves a consideration of the meaning of employment "in the establishment" and "in such operations" in relation to each other. If, in any workweek, an employee is "employed in the establishment in such operations" for more than a negligible period of time, he should be counted in determining whether, in that workweek, more than five employees were so employed. An employee so employed must be counted for this purpose regardless of whether he would, apart from this exemption, be within the coverage of the Act. Also, as noted in the following discussion, the employees to be counted are not necessarily limited to employees directly employed by the country elevator but may include employees directly employed by others who are engaged in performing operations of the elevator establishment.

§ 780.714 Employees employed "in such operations" to be counted.

(a) The five-employee limitation on the exemption for country elevators relates to the number of employees employed in the establishment "in such operations." This means that the employees to be counted include those employed in, and do not include any who are not employed in, the operations of the establishment commonly recognized as a country elevator, including the operations of such an establishment in selling products and services used in the operation of a farm, as previously explained.

(b) In some circumstances, an employee employed in an establishment commonly recognized as a country elevator may, during his workweek, be employed in work which is not part of

the operations of the elevator establishment. This would be true, for example, in the case of an employee who spends his entire workweek in the construction of an overflow warehouse for the elevator. Such an employee would not be counted in that workweek because constructing a warehouse is not part of the operations of the country elevator but is an entirely distinct activity.

(c) Employees employed by the same employer in a separate establishment in which he is engaged in a different business, and not employed in the operations of the elevator establishment, would not be counted.

(d) Employees not employed by the elevator establishment who come there sporadically, occasionally, or casually in the course of their duties for other employers are not employed in the operations of the establishment commonly recognized as a country elevator and would not be counted in determining whether the five-employee limitation is exceeded in any workweek. Examples of such employees are employees of a restaurant who bring food and beverages to the elevator employees, and employees of other employers who make deliveries to the establishment.

§ 780.715 Counting employees "employed in the establishment."

(a) Employees employed "in the establishment," if employed "in such operations" as previously explained, are to be counted in determining whether the five-employee limitation on the exemption is exceeded.

(b) Employees employed "in" the establishment clearly include all employees engaged, other than casually or sporadically, in performing any duties of their employment there, regardless of whether they are direct employees of the country elevator establishment or are employees of a farmer, independent contractor, or other person who are suffered or permitted to work (see Act, section 3(g)) in the establishment. However, tradesmen, such as dealers and their salesmen, for example, are not employed in the elevator simply because they visit the establishment to do business there. Neither are workers